

# The Orissa Gazette



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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 29th November 2007

No. 12916 — li/ 1(J) -11/2006 - L.E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2007 in I.D. Case No. 9 of 2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of the Managing Director, M/s General Engineering & Scientific Company Ltd., Berhampur and its Workman Syed Rouf was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT  
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 9 OF 2006

Dated the 26th July 2007

#### *Present :*

Shri G. K. Mishra, o. s. j. s.(Jr. Branch)  
Presiding Officer  
Labour Court, Jeypore  
Dist. Koraput.

#### *Between :*

The Managing Director M/s General Engineering & Scientific Co. Ltd. M/s O.S.I.C. Ltd., Industrial Estate, Khapuria At/P.O. Khapuria, Dist. Cuttack.	..	First Party—Management
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Vrs.

Its Workman Syed Rouf, S/o Late Syed Murtaza Abdul Wahat Street Bhapur Bazar, Berhampur, At/P.O. Berhampur Dist. Ganjam.	..	Second Party—Workman
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Under Section — 10 & 12 of the Industrial Dispute Act, 1947

#### *Appearances :*

For the Management	..	Shri Gouranga Prasad Behera and
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Shri S.R. Patnaik on behalf of the  
Managing Director, G.E. & S.C. Ltd.,  
Berhampur.

For the Workman	..	Self
Date of Argument	..	12-7-2007
Date of Award	..	26-7-2007

The Government of Orissa, Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 6508 (5), dated the 19th July 2006 for adjudication of the following dispute :

#### SCHEDULE

"Whether the action of the Managing Director, M/s General Engineering & Scientific Company Ltd., Industrial Estate, Berhampur ( a subsidiary of M/s O.S.I.C. Ltd., Cuttack) in terminating the services of Syed Rouf, Ex-Senior Machinist with effect from the 12th June 1998 by way of closing the undertaking is legal and/or justified ? If not, to what relief the workman is entitled ? "

#### AWARD

2. This is a case which has been originated out of the reference made by the Government for determination of the legality or justifiability of the matter of termination effected by the O. P. Management in respect of the petitioner-workman.

3. The management in connection with the reference appears to have put forth a plea that the closure of the establishment was only to get rid of the service of the O. P. and the notice given thereto was not justified on account of the adjudication being in continuity. The O.P. has also challenged the termination to be illegal.

4. The petitioner on the contrary severely challenged the issue taking non-maintainability of the reference submitted by the Government. On this score, the O.P. has never put forth the grievance before the conciliation authority challenging the termination except claiming of higher compensation. It is further contended that the Government without applying its mind and deliberately has framed the issue and referred the same to this court for the purpose of harassing the parties. It is further asserted that there being no dispute entertained on behalf of the workman the issue framed by the Government is completely void and requires no adjudication by the Labour Court.

5. The first party management having continuously incurred loss due to the lack of working capital to meet the countenances payment of the staff in absence of adequate fund for its operations in the establishment, the establishment was closed down with the approval of the Government for which consequent upon the closure the workman were compensated as per the provisions U/s. 25-F of the I.D.Act which has been accepted by the workman in respect of payment. The matter was meted out before the conciliation officer for settlement and it was decided that no dispute existed between parties due to the amicable settlement. The Conciliation Officer submitted his report drawing the attention of the Government regarding the 'No Dispute' between the parties. But unfortunately the Government without delving into the matter as submitted by the Conciliation Officer arbitrarily framed the issue dragging the matter of termination of the workman for adjudication by this court. It is the fettered power of the Government to give opinion regarding the existence of

dispute between parties on scrutinising the materials available in the record for adjudication by the Labour Court. Whether there is any dispute existed at the time of settlement effected at the instance of the Conciliation Officer, the Government should carefully verify the report before taking step for reference under a point to be adjudicated upon. The issue have been framed in a casual manner which gives rise to unnecessary dispute thereby prolonging the right of the litigation. The parties are being unnecessarily dragged into the dispute without any basic formation. The workman had never uttered any grievance against the termination of his service. Neither there is any of the Conciliation Officer or otherwise in order to construe dispute U/s 10 of the I.D.Act. In the evidence it has been testified by the workman that he has sought his grievance before the Conciliation Officer for higher compensation without challenging the termination which has been legality effected in the eye of closure of the establishment. The management also agreed to pay the compensation as entitled to the workman due to the closure of the establishment, where there is no dispute regarding act of termination the reference given or submitted by the Government is quite improper and requires no adjudication on that score. The reference on the issue of termination is considered to be misconceived. Since the workman is only concerned with the compensation as also approved by the management. The workman is entitled to receive the compensation as a means of loss of service for the closure of the establishment. The issue in reference is answered accordingly.

### ORDER

The issue under reference is being misconceived, no award is passed except relief for compensation to be awarded in favour of the second party workman.

Dictated and corrected by me.

G. K.MISHRA  
26-7-2007  
Presiding Officer  
Labour Court, Jeypore

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26-7-2007  
Presiding Officer  
Labour Court, Jeypore

By order of the Governor  
N. C. RAY  
Under-Secretary to Government